

### **REMARKS**

The present Amendment is in response to the Office Action dated February 17, 2005 in reference to the above-identified application. The Examiner set a shortened statutory period for reply of three (3) months, making the present Amendment due by May 17, 2005.

In that Office Action, claims 1-20 were pending. Applicant notes with appreciation the allowance of claim 1-20 and the indication that claims 2-5, 9 and 10 contain allowable subject matter. The remaining claims 1, 6-8, 11 and 12 were rejected as anticipated by U.S. Patent No. 5,868,295 to Carriere under 35 U.S.C. § 102(b).

Before turning to the substance on the rejection, the Examiner also objected to the specification for lacking an abstract and requested an abstract on a separate sheet. In this regard, the PTO mailed a "Notice to File Corrected Application Papers" to Applicant's counsel on March 4, 2005. This notice required the submission of an abstract. Applicant responded on April 11, 2005 by submitting the abstract. Accordingly, it is believed that this requirement has now been met.

Turning to the rejection of claims 1, 6-8, 11 and 12 over the Carriere patent, Applicant notes that the apparatus taught in Carriere is for a collapsible container system in the form of a collapsible "truck box" that is adapted to be tethered into the bed of a truck near the cab, as is shown in Figure 8. Thus, the Carriere patent is not directed to a cover that is adapted to mount over a frame extender on a vehicle as is the instant invention.

As explained in the present specification, and as set forth in the preamble to claim 1, the present invention is adapted for use with a frame extender that includes a generally C-shaped framework having a pair of leg sections and a central section joining the leg sections at one end thereof. The frame extender is adapted to mount at the rear of the truck bed to the sidewall 30 of the truck bed so that it may pivot between a retracted position (Figure 1) allowing the tail gate to close and an extended position (Figure 2) wherein it is located above the tail gate and provides a fence like enclosure to allow more cargo to be placed in the truck bed.

The truck box of Carriere, on the other hand, is in the form of a box-like enclosure having a bottom wall, front and back walls and end walls formed of a flexible material. A flexible top pivots along the upper back edge and may be closed by a zipper. Importantly, though, the collapsible container system of Carriere is not adapted to extend over a C-shaped frame extender. Rather, Carriere teaches an X-shaped brace located adjacent to each end wall of the container structure. Each brace is formed by scissoring rigid bars having ends received in securing pockets 35 and having opposite ends which may be placed in securing loops 34 to support the container in an expanded position. There is simply no indication that this structure could fit over a C-shaped bed extender as taught and claimed by the present invention. Indeed, as shown in Figure 8 of Carriere, the collapsible container 10 does not extend across the bed of the truck but rather has large gaps between its ends and the sidewall of the bed with these ends being stabilized by securing cords 14.

Applicant does not dispute, however, that Carriere does disclose a rectangular truck box formed of a flexible material and having a zippered cover. Therefore, Applicant has amended independent claim 1 to bring out for emphasis, in paragraph (C), that the enclosure formed by the first and second panels, the pair of side panels and the end panel are sized and adapted to receive the C-shaped framework (set forth in the preamble) in close-fitted engagement. When this occurs, the first and second panels span a region between the pair of leg sections of the C-shaped framework. Moreover, paragraph (D) of claim 1 is amended to recite that the closure panel, when it closes the opening, spans another end of each of the leg sections of the C-shaped framework which ends are opposite the ends to which the central section is joined. Even assuming *arguendo* that the truck box of Carriere could fit over a bed extender, there is simply no teaching that it would or should be sized and configured for close-fitted mated engagement. Therefore, it is suggested that independent claim 1 is allowable over the Carriere reference.

Since the Examiner has indicated that claims 2-5 include allowable subject matter, Applicant has provided new claim 21 which, in essence, is claims 2 and 3 written in the alternative, in independent form. More particularly, claim 21 includes the recitations of original claim 1 with the recitation, in paragraph (C), that there is at least one pocket structure located on at least one of the first and second seams. Since both original claims 2 and 3 were indicated to contain allowable subject matter, claim 21 should be allowable.

In view of submitting new claim 21, claims 2, 3 and 4 have been amended to change their dependency, so that they are now dependent upon claim 21. The redundant language contained in claims 2, 3 and 4 has been amended. The word "rear" has also been inserted into claims 2, 3 and 4 to make clearer the antecedent basis as to the location of the pocket structure(s) on the rear seams.

Allowable dependent claim 10 has likewise been rewritten in independent form and is presented as new independent claim 22. Accordingly, claim 10 has been cancelled.

Due to this Amendment, a new filing fee calculation is provided, as follows:

Maximum Total Claims This Amendment		Total Claims Previously Paid For	
21	-	20	= 1 x \$ 25.00 = \$25.00
Total Independent Claims Per This Amendment		Maximum Independent Claims Previously Paid For	
4	-	3	= 1 x \$100.00 = \$100.00
Additional Filing Fee Due			\$125.00

Accordingly, our check no. 18839 in the amount of \$125.00 is enclosed. The Commissioner is hereby authorized to charge any deficiency in the payment of the required fee(s) or credit any overpayment to Deposit Account No. 13-1940.

Based on the foregoing, Applicant submits that the present application is in complete condition for allowance, and action to that end is courteously solicited. If any issues remain to be resolved prior to the granting of this

application, the Examiner is requested to contact the undersigned attorney for the Applicant at the telephone number listed below.

Respectfully submitted,

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**CERTIFICATE OF MAILING UNDER 37 C.F.R. 1.8**

I hereby certify that the foregoing **AMENDMENT (14 pages), CHECK NO. 18839 IN THE AMOUNT OF \$125.00** is being deposited with the United States Postal Service as first-class mail in an envelope addressed to Mail Stop Fee Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 17<sup>th</sup> day of May, 2005.

  
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Marcie F. King